



# Employment Court of New Zealand

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## Juyi International Limited v Pan [2021] NZEmpC 28 (15 March 2021)

Last Updated: 18 March 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKĀURAU

[\[2021\] NZEmpC 28](#)

EMPC 314/2020

IN THE MATTER OF a challenge to a determination of  
the Employment Relations Authority  
AND IN THE MATTER of an application for stay of  
proceedings  
BETWEEN JUYI INTERNATIONAL LIMITED  
Plaintiff  
AND LONG PAN  
Defendant

**EMPC 386/2020**

IN THE MATTER OF an application for leave to bring a  
challenge out of time  
BETWEEN LONG PAN  
Applicant  
AND JUYI INTERNATIONAL LIMITED  
Respondent

Hearing: 11 March 2021 (heard at Auckland)  
Appearances: J Moss, counsel for Juyi International Ltd  
L Pan, in person (assisted by a Mandarin  
interpreter)  
Judgment: 15 March 2021

### INTERLOCUTORY JUDGMENT OF JUDGE B A CORKILL

**(Application for stay; application for leave to bring challenge out of time)**

#### Introduction

[1] This judgment records the outcome of two applications.

JUYI INTERNATIONAL LIMITED v LONG PAN [\[2021\] NZEmpC 28](#) [15 March 2021]

[2] The first is brought by Juyi International Limited (Juyi), for a stay of orders made by the Employment Relations Authority (the Authority) in a determination of 14 September 2020.1

[3] The second is brought by Mr Pan for leave to bring his own challenge in respect of that determination.

#### The Authority's determination

[4] The Authority considered a number of applications by Mr Pan as follows:

- a. Did Juyi fail to provide Mr Pan with work for which he was available? This application failed.

- b. Did Juyi meet its obligations to Mr Pan regarding rest breaks? This application failed.
- c. Did Juyi owe Mr Pan for sick leave? This application succeeded and the Authority directed Juyi to pay Mr Pan \$504.74.
- d. Did Juyi owe Mr Pan holiday pay? Juyi argued that holiday pay entitlements had effectively been discharged by arrangements it made for the provision of a new kitchen, it being a cabinetry company; however, the Authority concluded that this could not amount to satisfaction of holiday pay entitlements. It ordered Juyi to pay Mr Pan \$12,454.31 as holiday pay.
- e. Did Juyi meet its obligations to Mr Pan regarding KiwiSaver? This application failed.
- f. Juyi was also ordered to reimburse Mr Pan for the filing fee paid, \$71.56.

1 *Pan v Juyi International Ltd* [2020] NZERA 369 (Member Craig).

### **The application for stay**

[5] Juyi's application for stay was brought in the context of its non-de novo challenge as to the Authority's finding about holiday pay. Juyi alleges, in summary, that the Authority erred in its application of the provisions of the [Holidays Act 2003](#), by not considering whether equitable remedy should have been awarded to reflect the provision to Mr Pan of kitchen componentry in lieu of holiday pay. It is alleged that the Authority made an order which would unjustly enrich Mr Pan.

[6] Juyi accordingly seeks a stay of the order requiring it to pay holiday entitlements pending the hearing of its challenge. It asserts that its claim is strong, and that were it to succeed in the hearing of its challenge having paid the contested sum to Mr Pan, recovery would be problematic because he would be unlikely to voluntarily return the monies paid.

[7] Mr Pan filed a notice of opposition, essentially asserting that the Authority's conclusion as to the application of the [Holidays Act 2003](#) was correct. He did not file any evidence as to the issue concerning difficulties of repayment if Juyi's challenge were to succeed.

[8] At the hearing, Mr Moss, counsel for Juyi, confirmed that the amount ordered for sick pay had not been paid, and agreed that Juyi should settle this debt immediately.

[9] Also discussed was whether the sum involved in respect of the holiday pay should be paid into Court, as a condition of the granting of an order of stay. Such a step is one which is frequently ordered in circumstances such as the present. The parties agreed that this would be an appropriate step, since it would ensure there was a fund available for Mr Pan if Juyi's challenge fails; and Juyi could be confident that no difficulties of repayment would arise.

[10] In the circumstances I was satisfied that the interests of justice require the making of an order of stay, subject to the following conditions:<sup>2</sup>

- a. That the sum of \$504.74, ordered by the Authority as sick pay, to be paid by Juyi to Mr Pan by close of business on 12 March 2021.

2 At the hearing, I indicated to the parties I would make an order to this effect.

- b. That Juyi pay to the Registrar of the Employment Court the sum of \$12,454.31, and the filing fee of \$71.56, a total of \$12,525.87. This sum to be credited to an interest-bearing account, until further order of the Court.

[11] I reserve costs with regard to that application.

### **Application for leave**

[12] Mr Pan wishes to bring a non-de novo challenge in respect of two aspects of the Authority's determination.

[13] The first relates to his claim that he was not paid for a period when he was available to work, between 5 and 30 March 2018; this was one of the claims which failed in the Authority; the Authority preferred the evidence given for Juyi. He wishes to assert that the Authority erred by not granting his application.

[14] The second error he wishes to allege is that the Authority should have found that he was entitled to compensation for tea breaks from January to March 2019. The Authority found that he did not receive a morning tea break, although he was paid for a 50 per cent longer afternoon tea break than was legally required. There was, it said, difficulty in providing Mr Pan with a remedy. The Authority said he was paid for his time, but he was not able to take a rest; nor was there a personal grievance claim which could have led to remedies, or a penalty claim where any consequences for him could have been taken into account.<sup>3</sup>

[15] As noted, the Authority's determination was issued on 14 September 2020. The period of 28 days within which a challenge needed to be commenced expired on 12 October 2020. Juyi's own challenge was filed on 7 October 2020, but not served on Mr Pan until 31 October 2020. Initially, he had decided not to bring his own challenge. After he was served with Juyi's statement of claim, he changed his mind. By then he was out of time. Further, as a migrant, he has difficulties with the English

3 At [26].

language. Consequently, he did not prepare the necessary documentation until 27 November 2020, the date on which he attempted to file a statement of claim.

[16] Mr Pan was advised he was out of time, so he filed an application for leave supported by an affidavit; the statement of claim he had attempted to file was regarded as a draft pleading.

[17] In light of these facts, Mr Moss agreed that the circumstances were unusual. He said Juyi would not therefore oppose the relief sought by Mr Pan.

[18] For five reasons, I consider that the interests of justice require leave being granted:

- a. Mr Pan is self-represented and is plainly unfamiliar with the processes involved in filing pleadings within a set timeframe as stipulated under the [Employment Relations Act 2000](#).
- b. That issue is compounded by his language problems.
- c. Mr Pan's initial decision not to bring a challenge was understandable; so too was his subsequent decision however, to raise his own challenge after he learned that Juyi was bringing a challenge. This occurred when its statement of claim was served on him well outside the 28-day period for filing a challenge.
- d. Also relevant is the fact that there is already a related proceeding before the Court.
- e. I am not persuaded that undue prejudice would be caused to Juyi, given the application was not opposed at the hearing.

[19] Although the delay was not insignificant, when assessed in context it is understandable.<sup>4</sup>

<sup>4</sup> *Freeborn v Sfizio* [2019] NZEmpC 87 involved a not dissimilar circumstance.

[20] In the somewhat unusual circumstances, then, I consider that Mr Pan should be granted leave to file his statement of claim with the Registrar of the Court by

4.00 pm on 18 March 2021, together with the appropriate filing fee.

[21] The document is then to be served on Juyi; the company is to serve its statement of defence within seven days of service of the statement of claim.

[22] Costs are reserved.

B A Corkill Judge

Judgment signed at 4.20 pm on 15 March 2021